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**OFFICE OF PETITIONS**

In re Application of :  
Tomas CIHLAR :  
Application No. 10/086,816 : DECISION ON PETITION  
Filed: February 28, 2002 : UNDER 37 CFR 1.137(b)  
Attorney Docket No. 240.1PCD :  
:

This is a decision on the petition under 37 CFR 1.137(b), filed May 23, 2005, to revive the above-identified application.

The petition is granted.

In reply to the decision of May 4, 2005, which dismissed the petition under 37 CFR 1.137(b) filed March 3, 2005 as immaterial, petitioner requests reconsideration. Petitioner notes that notwithstanding the indication on the certificate of mailing on the transmittal letter accompanying the reply and extension of time received March 3, 2005, that such had been deposited as first class mail on February 24, 2005, that correspondence was not mailed on that date. Accordingly, as petitioner correctly notes, the correspondence was untimely, and as such, the correspondence is amenable to acceptance on petition under 37 CFR 1.137(b).

It follows, however, that the extension of time and fee was likewise untimely, and as such cannot be accepted after expiry of the maximum extendible statutory period. See 37 CFR 1.136(a); In re Application of S, 8 USPQ2d 1630, 1631 (Comm'r Pat. 1988). Accordingly, the \$1020 fee proffered for the three month extension of time is being credited to counsel's account.

The application file is being referred to the Technology Center.

Telephone inquiries concerning this decision should be directed to Betsy Deppe at (571) 272-6052 or in her absence, the undersigned at (571) 272-3217.

*Brian Hearn*

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